United Nations S/2016/325

Security Council

Distr.: General
8 April 2016
English
Original: French

Letter dated 6 April 2016 from the Permanent Representative of France to the United Nations addressed to the President of the Security Council

I have the honour to transmit herewith a letter dated 1 April 2016 from the High Negotiations Committee regarding the Dayr al-Asafir massacre (see annex).

I should be grateful if the present letter and its annex could be circulated as a document of the Security Council.

(*Signed*) François **Delattre**
Ambassador
Permanent Representative

16-05821 (E) 130416 140416

Please recycle

Annex to the letter dated 6 April 2016 from the Permanent Representative of France to the United Nations addressed to the President of the Security Council

[Original: Arabic]

I transmit herewith preliminary information concerning a horrifying massacre of civilians committed by the forces of the criminal Assad regime on Thursday, 31 March 2016, in the town of Dayr al-Asafir, in the eastern Ghutah. According to preliminary figures, 33 people were killed, most of them women and children. Over 60 injured people remain in field hospitals, many of them in critical condition.

The cessation of hostilities agreement has entered its 35th day. Yet the murderous, criminal regime in Damascus continues to act rashly, systematically killing the population in cold blood, with the support and active participation of mercenaries, including those of the Russian Federation, Iran, Iraq, the terrorist organization Hizbullah and others belonging to the sectarian militia that it has drafted into its insane frenzy of murder and destruction.

In our daily reports to you and to the United Nations, we have endeavoured to monitor the bitter reality of the cessation of hostilities agreement, which entered into force on 27 February 2016. Moreover, the "White Helmets" report shows clearly that the regime and its forces and allies have, from the very first day, continued to violate the agreement, disrespecting both it and its sponsors. They have not even shown any fear that those violations might have consequences.

The regime has targeted opposition groups that have complied with the agreement, which is supposed to protect them from attack. That very protection has thus been undermined, and the Assad regime has been encouraged to escalate its acts of hostility and insubordination, thereby challenging the frail resolve of the international community, and showing even greater contempt and disrespect for the United Nations and, in particular, the sponsors of the agreement.

Today, the regime carried out its most appalling massacre since the agreement entered into force. It launched missiles at a school, a hospital and a civil defence centre in the town of Dayr al-Asafir, in the eastern Ghutah. Warplanes then raided the area, targeting emergency and civil defence staff as they headed to the location of the attack, thereby claiming more victims, increasing the numbers of casualties among civilians and relief workers, and inflicting more extensive damage on public and private buildings.

We have said plenty, and there is much more to say. But the most important point, at this critical juncture, is that the cessation of hostilities agreement is on the verge of collapse. It is nearing its final moments, at which point the situation would explode and enter a new phase that would be difficult to control. Under such circumstances, it would be difficult for the political process to continue. The sponsors' credibility is on the line. They must place genuine pressure on the regime and compel it to end its violations; comply immediately, clearly and unambiguously with the authoritative international resolutions; and enact the political transition process provided in the Geneva communiqué of 2012 and the resolutions of the Security Council, particularly resolution 2254 (2015).

The regime has continued to show contempt for the resolutions of the Security Council and, in particular, for the sponsors of the political process. It is therefore incumbent on the Security Council to impose respect for its resolutions and defend its standing, which has been called into question.

(*Signed*) Riad **Hijab**
General Coordinator, High Negotiations Committee

Enclosure

The Dayr al-Asafir massacre

Warplanes launched dozens of air raids against the homes of civilians and public facilities, such as hospitals and schools, in the town of Dayr al-Asafir, in the eastern Ghutah. The attack killed 33 civilians, most of them women and children, and injured more than 60 others. Among the dead are a member of the Civil Defence and two members of the police force in the eastern Ghutah.

The Syrian Civil Defence centre in Dayr al-Asafir was taken out of service completely and no longer has any machinery, after it was struck by the warplanes. The town's only hospital was also hit.

Following is a preliminary list of victims, because there are still many injured persons in the field hospitals of the eastern Ghutah. A total of 33 deaths have been confirmed.

1. Mahmud Salim (teacher)
2. Abu Sami Bashir Ayash (civilian police)
3. Abu Shadi Mahmud al-Masri (civilian police)
4. Ibrahim Maslani
5. Walid al-Ghurani (civil defence)
6. Muhammad Uthman
7. Muhammad Uthman's wife
8. Umar Muhammad Uthman (child)
9. Ikhlas Muhammad Uthman (child)
10. Amin Muhammad Uthman (child)
11. Umm Umar al-Babidi
12. Yahya Mallak's wife
13. Muhammad Yahya Mallak (child)
14. Umar Riyad Khattab (child)
15. Yusuf Khattab (child)
16. A woman from the Aqqad family
17. Nur al-Din Uthman (child)
18. Muhammad al-Khatib (child)
19. Mu'minah al-Khatib (child)
20. Sulayman al-Ali
21. Muhammad al-Husayn
22. Khulud al-Muhammad (child)
23. Ula Fatiyah
24. Khadijah al-Misri
25. Ai'shah al-Khalid
26. Samir al-Mahmud
27. Abdulrahman al-Khalid (child)
28. Maysun al-Mahmud
29. Unidentified child
30. Unidentified woman
31. Unidentified man
32. Unidentified body
33. Unidentified body

YouTube links

https://www.youtube.com/watch?v=_IC2piYHMrE

https://www.youtube.com/watch?v=X0Oo83QJ5ks

https://www.youtube.com/watch?v=akN05MgqaKk

https://youtu.be/TuQM0frr5uc

https://youtu.be/p_p6sE5FzeM

United Nations S/2016/326

Security Council

Distr.: General
7 April 2016

Original: English

Letter dated 6 April 2016 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council

In reference to the letter dated 7 March 2016 from the Permanent Representative of Ethiopia to the United Nations, Tekeda Alemu, addressed to the President of the Security Council, please allow me to provide the following clarifications concerning the occupation by Ethiopia of sovereign Eritrean territory, including the town of Badme.

It will be recalled that article 4 of the Algiers Peace Agreement of 12 December 2000 provided for the creation of a commission, the Eritrea-Ethiopia Boundary Commission, in order to determine the location of the boundary between the two neighbouring countries in a final and binding award. Article 4, paragraph 2, of the Algiers Agreement states the following:

> The parties agree that a neutral Boundary Commission composed of five members shall be established with a mandate to delimit and demarcate the colonial treaty border based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law. The Commission shall not have the power to make decisions *ex aequo et bono*.

In accordance with that mandate, the Commission completed and delivered its final delimitation award on 13 April 2002 and immediately commenced the process of demarcation. The final and binding demarcation phase was as clearly applicable as the delimitation phase. However, Ethiopia immediately began to obstruct the Commission's demarcation activities and the placement of pillars on the ground conducted on the basis of the historical delimitation line that the Commission had clearly identified in its award of 13 April 2002. The Commission consistently described the obstruction by Ethiopia as nothing more than an expression of dissatisfaction with the Commission's substantive findings. In this regard, the President of the Commission, Elihu Lauterpacht, in a letter dated 27 November 2006 addressed to the then Minister of Foreign Affairs of Ethiopia, Seyoum Mesfin, stated that the truth of the matter appeared to be that Ethiopia was dissatisfied with the substance of the Commission's delimitation decision and had been seeking ever since 2002 to find ways of changing it.

Rejecting the intransigence and obstruction shown by Ethiopia, and in fulfilment of its responsibility and mandate under the treaty, the Commission demarcated the Eritrea-Ethiopia border by means of highly accurate and technically precise coordinates. In this regard, the Commission wrote to the parties concerned

Please recycle

and the Secretary-General, Ban Ki-moon, informing them that it had fulfilled its mandated responsibilities and unequivocally concluded its arbitration process. It stated that it had determined that the boundary would automatically stand as demarcated by the boundary points listed in the annex to its letter and that the mandate of the Commission could be regarded as fulfilled.

On 30 November 2007, the Commission also sent to the parties signed copies of 45 maps with a scale of 1:25,000 containing the demarcation of the boundary by coordinates and deposited a copy with the Geospatial Information Section of the United Nations for public reference. Thus, no matter what Ethiopia says, the border between Eritrea and Ethiopia is delimited and demarcated. Final and binding means final and binding.

Ethiopia has constantly attempted to disguise its non-acceptance of the final and binding delimitation and demarcation decisions of the Commission with a variety of transparent stratagems, none of which has any legal basis. First, it claimed to be seeking an "interpretation" of the delimitation award in a lengthy request to the Commission that (as the Commission explicitly noted in its rejection of the Ethiopian request) was nothing more than a substantive complaint against the Commission's decision about the location of the Eritrea-Ethiopia legal boundary. Then it began to resettle Ethiopians who had never lived in the border region into the territory that the Commission had just recognized and awarded as sovereign Eritrean territory, ignoring the Commission's order that this settlement programme be immediately terminated. Its current stratagem, presented as a "dialogue", is to demand that Eritrea negotiate the location of the boundary, claiming that "the Commission had made errors" in its delimitation and demarcation award that the two countries had to rectify.

Nothing in the Algiers Agreement gives Ethiopia the right to reject, question and amend the final and binding delimitation and demarcation decisions of the Commission or to impose conditions on Eritrea. Neither Eritrea nor Ethiopia has the power to veto the Commission's final and binding delimitation and demarcation decisions. Ethiopia is not entitled to demand concessions of any kind as a quid pro quo for vacating sovereign Eritrean territory, including the town of Badme. Ethiopia is clearly demanding that Eritrea cede sovereign Eritrean territory to Ethiopia in a process that it calls a "dialogue". Such "dialogue" is nothing more than holding Eritrean territory hostage in order to extract concessions.

If Ethiopia wants to improve relations with Eritrea, it must respect its obligations under the treaty and the Charter of the United Nations by withdrawing from the sovereign Eritrean territory that it occupies, including the town of Badme. If Ethiopia is allowed to shirk its responsibility by challenging the authority of the Commission, a body which has been fully mandated by the parties to make a final and binding decision and endorsed by the Security Council, then Eritrea will face an infinite series of additional demands, with Ethiopia requesting and imposing new conditions under the pretext of dialogue.

The precedent that condoning such behaviour by Ethiopia would set is immensely dangerous to the resolution of boundary conflicts and the stability of international borders, undermining the respect that States must give to the peace treaties that they sign, in compliance with Chapter VI of the Charter. No matter how much Ethiopia wishes to exert some unlawful veto power over the Commission's award under the guise of demanding "dialogue", such power is totally inconsistent

with the terms of the final and binding Algiers Agreement signed by the leaders of the two countries and endorsed by the Security Council at the end of the border war. The Security Council should make it clear that the behaviour of Ethiopia is unacceptable. Ethiopia must respect the Charter, its treaty obligation and the final and binding 2002 delimitation and 2007 demarcation decisions of the Commission. Ethiopia must comply with article 4, paragraph 15, of the Algiers Peace Agreement, which states that:

> The parties agree that the delimitation and demarcation determinations of the Commission shall be final and binding. Each party shall respect the border so determined, as well as the territorial integrity and sovereignty of the other party.

The Security Council must therefore urge Ethiopia to withdraw unconditionally and immediately from sovereign Eritrean territory, including the town of Badme. The United Nations and the African Union must guarantee the respect of the Algiers Agreement. Last but not least, justice must be upheld. No nation big or small should be allowed to occupy the sovereign territory of another country.

In conclusion, I want to assure members of the Security Council that, once Ethiopia vacates sovereign Eritrean territory, including the town of Badme, Eritrea will be ready and willing to normalize its relations with Ethiopia and to engage in constructive dialogue on issues that are relevant and beneficial to the peoples of Ethiopia and Eritrea as well as to the stability of the Horn of Africa and the Red Sea region.

I should be most grateful if the present letter were circulated as a document of the Security Council.

(*Signed*) Girma Asmerom **Tesfay**
Ambassador
Permanent Representative

United Nations S/2016/327

Security Council

Distr.: General
14 April 2016
English
Original: Arabic

Identical letters dated 7 April 2016 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council

On instructions from my Government, I should like to draw your attention to the following information regarding the terrorist attacks committed by armed terrorist groups active in Syrian territory in the month of March 2016:

1 March

- Eight shells were fired from inside Turkish territory at a group of foreign journalists who were in the Kinnisibba area in north-eastern rural Ladhiqiyah to cover the cessation of hostilities. Four journalists from Russia, China, Bulgaria and Canada were injured.
- Seven mortar shells and rockets struck the homes of residents of the Sabil and Matar neighbourhoods in Dar'a city and caused material damage to property.

6 March

- Dozens of rockets and mortar shells rained down on the Shaykh Maqsud neighbourhood of Aleppo, killing 13 people and injuring over 40 others.
- A mine planted by terrorist groups in the Safirah neighbourhood of Aleppo exploded, injuring three civilians.
- Four civilians were killed and three others were injured by an explosive device that terrorist groups had planted in the Khanasir neighbourhood of Aleppo.
- Two children were injured by a mine and a bomb that Islamic State of Iraq and the Levant (ISIL) terrorists had planted in the village of Hamar al-Sharqiyah and Shaddadah city in rural Hasakah.

7 March

- One woman was killed in Dar'a by a mine that terrorist groups had planted near a Syrian Arab Army checkpoint.
- A mine planted by terrorist groups in Nawfaliyah village in Hasakah exploded, killing one woman and injuring three civilians.

Please recycle

- An explosive device that terrorist groups had planted in Quwwatli Street in Hasakah injured five civilians, three of whom were women.
- A mortar shell fell on the Shaykh Maqsud neighbourhood of Aleppo, killing seven civilians, including three women and three children.
- Mortar shells fell on the Qusur neighbourhood of Dayr al-Zawr, killing eight civilians and injuring 12 others.

8 March

- A gas cylinder missile fell on the Shaykh Maqsud neighbourhood of Aleppo, injuring one civilian.
- Three civilians were killed and two others injured by a mortar shell that fell on the Qusur neighbourhood of Dayr al-Zawr.

10, 11 and 12 March

- A group of ISIL terrorists infiltrated Ma'arrat al-Bayda village in Dar'a and slaughtered two civilians and injured two women.
- Six civilians, five of them women, were injured when ISIL fired 21 rockets at the Mafqar al-Sharqi and Suqaylibiyah I areas of Hama.
- Shells fell on several areas of Aleppo, injuring three civilians.
- A mortar shell fell on Jafrah village in Dayr al-Zawr, injuring one civilian.
- A civilian was killed by a mine planted that terrorist groups had planted in Umm Hajirah village in Hasakah.

13 March

- Nine mortar shells fell on various parts of Dar'a, injuring a number of civilians.
- A civilian was injured by shrapnel when a gas cylinder missile struck the Shaykh Maqsud neighbourhood of Aleppo.
- Five mortar shells fell on the Qusur neighbourhood of Dayr al-Zawr, killing one girl and injuring two civilians.

14 March

- Ten mortar shells fell on Unq al-Hawa village in Homs, killing two women.
- Armed terrorist groups fired mortar shells at Mas'udiyah village in Homs, killing one civilian.

16 March

- Armed terrorist groups attacked the town of Manin in Rif Dimashq, killing two civilians.
- A civilian was killed and two others were injured by shells that armed terrorist groups had fired at the Shaykh Maqsud and Ashrafiyah neighbourhoods of Aleppo.

17 and 18 March

- A gas cylinder missile fell on Aleppo, killing two children and injuring one civilian.
- A woman was killed and six others were injured by a mortar shell that fell on the Maydan area of Aleppo.
- Rockets fired at the Jam'iyat al-Zahra' neighbourhood of Aleppo killed one boy and one girl and injured several others.
- Two landmines planted by terrorist groups in Hasakah exploded, killing two civilians and injuring six others, including one girl and one woman.

19 and 20 March

- A landmine planted by terrorist groups in the town of Qarfa in Dar'a exploded, killing three civilians.
- Several rockets struck Aleppo, killing four civilians, two of whom were girls, and injuring 12 others.
- A landmine planted by terrorist groups in Jabal Abd al-Aziz in Hasakah exploded, injured one civilian.
- Several mortar shells fell on Hasakah, killing one girl and injuring four other civilians, including two children.
- Armed terrorist groups infiltrated the Dawud neighbourhood of Hasakah and killed one woman and one boy.
- Terrorist groups directed sniper fire at the population of the town of Fu'ah in Idlib, killing three civilians, including one woman, and injuring one civilian.

21 March

- Mortar shells fell on several areas of Aleppo, injuring one woman and two children.
- Four civilians, three of them women, were injured by two mortar shells that armed terrorist groups fired at the Harabish neighbourhood of Dayr al-Zawr.

23 March

- Mortar shells fell on the Harasta suburb of Rif Dimashq, injuring three civilians.
- Fifteen civilians, some of whom were children, were killed in armed clashes between ISIL and Nusrah Front terrorists in the town of Jallayn in Dar'a.
- A civilian was injured by a landmine planted by armed terrorist groups in rural Hasakah.
- Several mortar shells fell on Dayr al-Zawr, injuring four civilians.

24 and 25 March

- A gas cylinder missile fired from the Amiriyah neighbourhood of Aleppo struck the Salah al-Din neighbourhood, injuring one woman.

- A gas cylinder missile fired from the Bani Zayd neighbourhood of Aleppo struck the Shaykh Maqsud neighbourhood, killing one civilian.
- A terrorist group in Aleppo fired gas cylinder missiles at several areas, killing two civilians and injuring five others. A civilian woman who had been injured by shell fragments in Hamdaniyah was admitted to Aleppo Hospital.

27 and 28 March

- One woman was injured by a mortar shell that fell on the Jam'iyat al-Zahra' neighbourhood of Aleppo.
- One civilian was injured by a landmine that had been planted by terrorist groups in Aleppo.
- Armed terrorist groups fired a rocket at a passenger bus, injuring two civilians.
- A woman was killed and 10 other civilians, seven of them women, were injured when nine mortar shells fell on the Harabish neighbourhood of Dayr al-Zawr.
- A civilian was injured by a landmine that had been planted by armed terrorist groups in Khama'il village in Hasakah.

31 March and 1 April

- A civilian woman was injured when a terrorist sniper fired at a microbus on the Harasta highway in Damascus.
- Two mortar shells fell on the Harasta suburb of Rif Dimashq, injuring one civilian.
- Several civilians were killed and injured by several shells that fell on the Shaykh Maqsud neighbourhood of Aleppo.
- Two civilians were injured by a landmine planted by armed terrorist groups on the Hasakah-Dayr al-Zawr highway.
- One child was killed and 21 other civilians, four of them children, were injured by explosive devices in several areas of Homs.
- A rocket fired at the Harabish neighbourhood of Dayr al-Zawr killed one woman.
- A gas cylinder missile fell on Aleppo, injuring one civilian woman.

I should be grateful if the present letter could be issued as a document of the Security Council.

(*Signed*) Bashar **Ja'afari**
Ambassador
Permanent Representative

United Nations S/2016/328

Security Council

Distr.: General
7 April 2016

Original: English

Report of the Secretary-General on technical assistance provided to the African Union Commission and the Transitional Government of National Unity for the implementation of chapter V of the Agreement on the Resolution of the Conflict in the Republic of South Sudan

I. Introduction

1. The present report is submitted pursuant to Security Council resolution 2241 (2015), in which the Council requested me to make available technical assistance for the implementation of chapter V of the Agreement on the Resolution of the Conflict in the Republic of South Sudan, including in setting up the Hybrid Court for South Sudan as envisaged in the Agreement, to the African Union Commission and the Transitional Government of National Unity, in consultation with them and consistent with article 1.5 of chapter V of the Agreement, and with regard to the establishment of the Commission for Truth, Reconciliation and Healing.

2. In the same resolution, the Council requested that I report to it within six months of the date of adoption of the resolution on the technical assistance provided and invited the African Union to share information on progress made to inform my report. The Council further expressed its intention at that time to assess the work that had been done towards establishing the Hybrid Court for South Sudan. I recall that the Council reiterated these requests in its resolution 2252 (2015).

II. Hybrid Court for South Sudan

3. Since December 2013, there has been a political, security and humanitarian crisis and subsequent violence in South Sudan, with serious violations of international humanitarian law and human rights having been committed. The crimes perpetrated include extrajudicial killings, ethnically targeted violence, rape and other forms of sexual and gender-based violence, the recruitment and use of children, enforced disappearances, arbitrary arrests and detentions, violence aimed at spreading terror among the civilian population and attacks on schools, places of worship, hospitals, United Nations and associated peacekeeping personnel and humanitarian staff and assets. Calls for accountability have been made in numerous forums, including the Security Council, the Human Rights Council and the African Union Peace and Security Council, and by civil society.

Please recycle

4. The parties to the Agreement agreed that a hybrid court for South Sudan should be established to assist in ensuring accountability. The general framework for the Hybrid Court is provided in chapter V of the Agreement, on transitional justice, accountability, reconciliation and healing. Specifically, it is stated in article 3 of chapter V that the Hybrid Court shall be an independent hybrid judicial court and that it shall be established by the African Union Commission to investigate and prosecute individuals bearing the responsibility for violations of international law and/or applicable South Sudanese law, committed from 15 December 2013 to the end of the transitional period. Also set out in article 3 are broad guidelines for the jurisdiction, mandate and supremacy of the Hybrid Court, the personnel and appointment procedures, the rights of victims and witnesses, criminal responsibility and penalties.

III. Commission for Truth, Reconciliation and Healing

5. In the Agreement, the Commission for Truth, Reconciliation and Healing is mandated to inquire into all aspects of human rights violations and abuses, breaches of the rule of law and excessive abuses of power committed against all persons in South Sudan by State and non-State actors and/or their agents and allies. It is stated that the Commission shall investigate, document and report on the course and cause of conflict and recommend processes for victims to receive reparation and compensation. In accordance with the Agreement, the implementing legislation shall outline mechanisms and methods for enabling the Commission to discharge its duties and responsibilities. The Ministry of Justice and Constitutional Affairs of the Transitional Government of National Unity is tasked with conducting public consultations for a period beginning not less than one month before the establishment of the Commission.

IV. Progress made by the African Union[1]

6. The African Union Commission is responsible, under article 3 of chapter V of the Agreement and the communiqué of the African Union Peace and Security Council of 26 September 2015, for providing broad guidelines relating to the location of the Hybrid Court for South Sudan, its infrastructure, funding mechanisms and enforcement mechanism, the applicable jurisprudence, number and composition of judges, the privileges and immunities of Court personnel and any other related matters.

7. On 2 November 2015, the African Union held a high-level ad hoc workshop on the implementation of the Agreement, with the participation of members of the African Union High-level Ad Hoc Committee for South Sudan, member States of the Intergovernmental Authority on Development (IGAD) and "IGAD-plus" representatives.

8. The outcomes of the workshop included the following recommendations to the African Union Commission in relation to the establishment of the Hybrid Court for South Sudan: (a) prepare the African Union position on the elements required for

[1] The information in the present section was provided by the Office of the Legal Counsel of the African Union Commission.

the establishment of the Hybrid Court in line with the provisions of the Agreement; (b) on the basis of the African Union position, engage the United Nations and the South Sudanese parties as soon as the Transitional Government of National Unity had been established; (c) mobilize resources for the Hybrid Court and the Commission on Truth, Reconciliation and Healing, as appropriate; and (d) constitute and convene a technical working group to prepare and provide advice on the above-mentioned tasks.

9. In its communiqué of 29 January 2016, the African Union Peace and Security Council called upon the African Union Commission to urgently implement the outcomes of the workshop. The Commission has mandated the Office of the Legal Counsel to be the central department of the Commission on international criminal justice issues to coordinate the process towards the establishment of the Hybrid Court.

10. The African Union Commission convened an interdepartmental meeting on 24 March 2016 on the establishment of the Hybrid Court, which was chaired by the Legal Counsel of the African Union Commission. The offer of United Nations assistance was welcomed during that meeting and the modalities for such assistance, including the deployment of personnel, will now be developed.

V. United Nations assistance for setting up the Hybrid Court for South Sudan

11. This is the first time the Secretariat has been tasked with providing technical assistance to a regional organization for the establishment of a hybrid tribunal. The United Nations has a wealth of expertise in the establishment and operation of international and United Nations-assisted criminal courts and tribunals. In the present context, the Secretariat's role will be to convey that expertise to a regional partner, which will play the leading role. It must also be recalled that there are parallel efforts to implement other elements of the Agreement, which could have an impact on the establishment of the Hybrid Court.

12. Following the adoption by the Security Council of its resolution 2241 (2015), an interdepartmental working group convened to discuss the provision of technical assistance to the African Union Commission and the Transitional Government of National Unity for the establishment of the Hybrid Court. The working group comprised the Office of Legal Affairs, the Department of Peacekeeping Operations, the United Nations Office to the African Union, the Office of the United Nations High Commissioner for Human Rights, the Office of the Special Adviser on the Prevention of Genocide, UNDP and the Peacebuilding Support Office. In keeping with its primary responsibility on matters of international criminal accountability within the Secretariat, the Office of Legal Affairs initiated contact with the Office of the Legal Counsel of the African Union Commission.

13. Following the initial contact, on 15 January 2016, the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel sent a letter to the Legal Counsel of the African Union Commission extending the United Nations offer of technical assistance contemplated by the Security Council in its resolutions 2241 (2015) and 2252 (2015). The Legal Counsel of the African Union Commission has welcomed the

offer of assistance and expressed willingness to collaborate with the Office of Legal Affairs of the Secretariat.

14. There have since been exchanges between the two offices to identify the concrete needs of the African Union Commission with regard to the establishment of the Hybrid Court. In addition, the Office of Legal Affairs has shared information about the lessons learned from past experiences in the establishment and operation of international and hybrid criminal tribunals. The information shared thus far covers key practical issues that will have to be addressed in preparation for the establishment of the Hybrid Court, including the legal basis for the establishment of an international tribunal; the role of technical assessment missions; issues of cost and funding; selection of judges and composition of the bench; defence counsel; location; the contribution to building national judicial capacity; and outreach. The discussions between the two offices on these practical issues are ongoing.

15. While the precise nature and timing of the technical assistance to be provided will depend on the African Union position on the Hybrid Court and the views of the future Transitional Government of National Unity, the Office of Legal Affairs is prepared to work closely with the Office of the Legal Counsel of the African Union Commission to produce specific and concrete results. If requested, the Office of Legal Affairs would, among other things, assist in the drafting of legal instruments for the establishment and operation of the Hybrid Court.

16. The preparation of the constitutive legal instruments may entail making recommendations on substantive legal issues, such as the legal basis for the establishment of the Hybrid Court, the personal jurisdiction of the Hybrid Court (since subject matter and temporal jurisdiction are already set forth in the Agreement) and the non-applicability of any amnesties and penalties, including the non-imposition of the death penalty. Special attention will be paid to measures relating to the governance of the Hybrid Court.

17. Suggestions concerning practical arrangements for the operation of the Hybrid Court will also have to be put forward. Drawing from the experience of other criminal tribunals, practical arrangements would encompass the organizational structure of the Hybrid Court, its funding mechanism, its location and premises, the commencement of its functioning and measures for the protection of witnesses, the participation of victims and the enforcement of sentences. In addition, practical arrangements would encompass recommendations for any anticipated support to and engagement with the Hybrid Court and other transitional justice mechanisms of the United Nations Mission in South Sudan (UNMISS), with due consideration given to the resources required for the Mission to take forward ongoing mandated tasks.

VI. United Nations assistance for the implementation of other transitional justice measures envisaged in the Agreement

18. With regard to the other transitional justice measures referred to in chapter V of the Agreement, it is important that the necessary preconditions for the establishment of transitional justice mechanisms be in place, including a complete cessation of hostilities; security; a high level of political commitment; and the necessary resources. Comprehensive, meaningful and inclusive consultations with all key stakeholders are advisable.

19. To pave the way for such an independent and inclusive consultation process, UNMISS and UNDP have already engaged different stakeholders, including civil society and the South Sudan Peace Commission, in a dialogue intended to stimulate discussion on the framework for the implementation of chapter V of the Agreement. Consequently, a conference on transitional justice was held in Juba in November 2015, with a follow-up session held in Nairobi in February 2016. The conference in Juba was organized jointly by the South Sudan Law Society and UNDP. Participants included the Ministry of Justice of South Sudan, civil society, the judiciary of South Sudan, the South Sudan Peace Commission, representatives from the South Sudan Council of Churches and national and international transitional justice experts. The conference resulted in concrete conclusions and recommendations with regard to the establishment, objectives, mandate and selection of commissioners and personnel of the Commission on Truth, Reconciliation and Healing and the Compensation and Reparation Authority, as well as the relationship between the two entities. Seven draft principles were developed to serve as a common reference for the development of a road map towards a comprehensive programme for transitional justice in South Sudan.

20. UNDP has provided the Ministry of Justice with technical advice on the key options to be considered in establishing a truth commission and in harnessing traditional mechanisms for reconciliation. UNMISS is considering engagement with entities tasked with the promotion of peace and reconciliation at the national and subnational levels, which are likely to continue to exist. Under the umbrella of the Commission on Truth, Reconciliation and Healing, these stakeholders can continue to work in collaboration for peace and reconciliation.

21. UNDP is providing support to the recently formed Transitional Justice Working Group, which is composed of several civil society organizations. The Working Group will help to coordinate the activities of civil society actors engaged in transitional justice in South Sudan so that they can play a crucial role in representing citizens, supporting the peace agreement and providing an interface between transitional justice stakeholders and official transitional justice processes in South Sudan.

22. On 17 and 18 February 2016, a meeting of the Transitional Justice Working Group was organized, with support from UNDP, through its project on access to justice and the rule of law, and external partners. The elements of a strategy for engagement in the transitional justice process have been developed.

23. On 22 February 2016, UNMISS shared its legal analysis of the proposed Penal Code Amendment Bill 2016 with the Chair of the Legislation and Justice Committee of the Transitional National Legislative Assembly and other officials to help to ensure that all international crimes are codified in the national legal framework. The proposed bill would ensure that national courts have the necessary legislation and jurisdiction in place to enable the prosecution and adjudication of international crimes, including war crimes, genocide and crimes against humanity.

VII. Observations

24. I stand ready to provide technical assistance for the establishment of the Hybrid Court for South Sudan, in accordance with Security Council resolutions 2241 (2015) and 2252 (2015). My ability to provide such assistance will necessarily

depend on the progress made in the implementation of the Agreement on the Resolution of the Conflict in the Republic of South Sudan and by the African Union Commission in its efforts to establish the Hybrid Court. In that regard, I wish to reiterate the Secretariat's long-standing advice that the funding of international criminal tribunals requires a sustainable mechanism. It should also be noted that the work of the African Union Commission may not be able to advance further in the absence of a fully-constituted and functional Transitional Government of National Unity. The establishment of the Transitional Government and its willingness to support and cooperate with regional and international organizations are therefore critical.

25. In several reports, including the report of the Office of the United Nations High Commissioner for Human Rights to the Human Rights Council of 10 March 2016, it has been found that there are reasonable grounds to believe that gross violations of international human rights law, human rights abuses, serious violations of international humanitarian law and crimes under international law have been committed in South Sudan by government forces and affiliated militias, as well as opposition forces. I share the grave concern of the Security Council about these alleged crimes, which, as the Council has noted, threaten the peace, security and stability of South Sudan. There is an increasingly urgent need to end impunity in South Sudan and bring to justice all perpetrators of such crimes. Accountability, reconciliation and healing are essential to ensuring sustainable peace. I therefore remain fully committed to continuing to provide technical assistance to the African Union Commission to ensure that the Hybrid Court for South Sudan is established as quickly as possible.